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12 Attorneys for Defendants
13 SAFRAN, S.A., SAFRAN IDENTITY &
14 SECURITY, S.A.S (formerly known as Morpho
15 SAS), and SAFRAN USA, INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 UNITED STATES OF AMERICA and
20 STATE OF CALIFORNIA, *ex rel.*
21 VINCENT HASCOET and PHILIPPE
22 PACAUD DESBOIS,

23 Plaintiffs,

24 v.

25 MORPHO, S.A., a/k/a SAFRAN
26 IDENTITY & SECURITY, S.A., a
27 French Corporation; SAFRAN, S.A.,
28 a/k/a SAFRAN GROUP, S.A., a French
Corporation; and SAFRAN U.S.A.,
INC., a California corporation,

Defendants.

Case No. 5:15-cv-00746-LHK

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF MOTION TO DISMISS
RELATORS' THIRD AMENDED
COMPLAINT**

Pursuant to Federal Rule of Evidence 201, defendants Safran, S.A. (“Safran”) (erroneously identified as “Safran Group, S.A.”), Safran Identity & Security, S.A. (formerly known as “Morpho, S.A.”) (“Safran SIS”), and Safran U.S.A., Inc., (“Safran USA”), (collectively, “Defendants”) respectfully request that the Court take judicial notice of the following:

1. A copy of the brochure entitled, “Safran In The U.S.” available for download at <http://www.safran-usa.com/safran-usa>, http://www.safran-usa.com/sites/safran_usa/files/brochure-us_format-web.pdf, attached as **Exhibit A**.
2. A copy of Customs Ruling HQ H268858 (Feb. 12, 2016) (https://www.customsmobile.com/rulings/docview?doc_id=HQ%20H268858&highlight=Customs%20Ruling%20HQ%20H268858) issued by U.S. Customs and Border Protection, attached as **Exhibit B**.
3. A copy of Custom Ruling HQ H243606 (Dec. 4, 2013), 78 Fed. Reg. 75362 (Dec. 11, 2013), (https://www.customsmobile.com/rulings/docview?doc_id=HQ%20H243606&highlight=HQ%20H243606), issued by U.S. Customs and Border Protection, attached as **Exhibit C**.
4. A copy of “TAA Designated Countries” available at <http://gsa.federalschedules.com/resources/taa-designated-countries/>, attached as **Exhibit D**.
5. A copy of the brochure entitled, “MorphoTrust USA Identity Services U.S. Leader in Identity Solutions” available for download at <http://www.morphotrust.com/Portals/0/Marketing/Brochures/MorphoT>

rust_Brochure_Fingerprinting_050613_web.pdf, attached as **Exhibit E**.

6. Article entitled, “MorphoTrak Chosen as Biometric Provider for FBI Next Generation Identification Program,” September 8, 2009, available at <https://www.morpho.com/en/media/morphotrak-chosen-biometric-provider-fbi-next-generation-identification-program-20090908>, attached as **Exhibit F**.

7. A copy of the brochure entitled, “Identity & Security – Making Life Safer and Easier,” available for download at www.morpho.com/en/about-us [You want to know more about our company? Download our brochure], attached as **Exhibit G**.

8. Article entitled, “MorphoTrak Celebrates 40 years of Fingerprints” available at <http://findbiometrics.com/morphotrak-celebrates-40-years-of-fingerprints/>, attached as **Exhibit H**.

9. Contract transaction for Department of Justice’s Blanket Purchase Agreement, Fingerprint Scanner, available at http://www.fedspending.org/fpds/fpds.php?reptype=r&database=fpds&unique_transaction_id=553c558c30a4a978e84ffd24ba8f0130&detail=3&dtype=T&sortp=i, attached as **Exhibit I**.

10. Article entitled, “Federal Bureau of Investigation Awards Lockheed Martin Biometric Card Scanning Service Contract,” 6/22/2009, available at www.lockheedmartin.com/us/news/press-

1 releases/2009/june/FederalBureauInvestigatio.html, attached hereto as
2 **Exhibit J.**

3
4 11. Article entitled, “Next Generation Identification (NGI),” available at
5 www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi,
6 attached hereto as **Exhibit K.**

7
8 12. A copy of an article entitled, “BIO-key International Awards Contract
9 For Fingerprint Biometric Identity Solution” available for download
10 http://www.news-medical.net/news/20100806/BIO-key-International-
11 awards-contract-for-fingerprint-biometric-identity-solution.aspx,
12 attached as **Exhibit L.**

13
14 13. A copy of an article entitled, “FBI Upgrades to Faster, More Accurate
15 Fingerprint Identification System” available at
16 http://www.networkworld.com/article/2201167/data-center/fbi-turns-
17 up-faster--more-accurate-fingerprint-identification-system.html,
18 attached at **Exhibit M.**

19
20 14. A copy of an article entitled, “Biometric Technology Supplied by
21 MorphoTrak for FBI NGI to Transform Crime-Solving,” available at
22 policeone.com, attached hereto as **Exhibit N.**

23
24 15. A copy of Frank Barret’s LinkedIn profile, attached hereto as **Exhibit**
25 **Q.**

AUTHORITY

A. Applicable Standard

Judicial notice of a fact is proper where the fact is not subject to reasonable dispute because it is: (1) generally known within the territorial jurisdiction of the trial court or (2) “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Courts are required to take judicial notice of facts if requested by a party and supplied with the necessary information under Rule 201(c)(2).

In general, the Court may consider documents outside of the pleadings in support of a Rule 12(b)(6) motion to dismiss if the document is referenced in plaintiff’s complaint and the document is “central” to plaintiff’s claim. *See Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (9th Cir.1993); *Glenbrook Homeowners Ass’n v. Scottsdale Ins. Co.*, 858 F. Supp. 986, 987 (N.D. Cal. 1994). The Court may also take judicial notice of facts records outside the pleadings. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (taking judicial notice of public records); *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

Moreover, the court may take judicial notice of the existence of unrelated court documents, although it will not take judicial notice of such documents for the truth of the matter asserted therein. *In re Bare Escentuals, Inc. Securities Litig.*, 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010). While matters of public record are proper subjects of judicial notice, a court may take notice only of the existence and authenticity of an item, not the truth of its contents. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001). Under these rules, the court can take judicial notice of “public records and government documents available from reliable sources on the Internet, such as websites run by governmental agencies.” *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F.Supp.3d 1011, 1033 (C.D. Cal. 2015).

B. Information From Various Website Referenced In Complaint

A court may take judicial notice of documents referenced in the complaint, as well as matters in the public record, without converting a motion to dismiss into one for summary judgment. *See Lee*, 250 F.3d at 688-89. Courts find information available on a website to be a proper subject for judicial notice where those materials are relied on by plaintiff or concern facts at issue in the complaint. *See, e.g., Datel Holdings Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974, 985 (N.D. Cal. 2010) (taking judicial notice of videogame screenshots and materials from defendant Microsoft’s website); *see also Gustavson v. Wrigley Sales Co.*, 961 F. Supp. 2d 1100, 1113, n.1 (N.D. Cal. 2013) (judicial notice of packaging label screenshots taken from a website promoting cocoa extract supplement was appropriate in consumer’s putative class action against producers of confectionary, alleging that producers’ package labeling was “misbranded”); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965–66 (C.D. Cal. 2005) (taking judicial notice of Amazon.com pages and web information from medical associations); *Castagnola v. Hewlett-Packard Co.*, C 11-05772 JSW, 2012 WL 2159385 (N.D. Cal. June 13, 2012) (taking judicial notice of screenshots of Defendant’s webpages where plaintiffs did not dispute the accuracy or the authenticity).

Here, Relators’ Third Amended Complaint (“TAC”) expressly quotes, refers to, or references information gathered from numerous websites. These exhibits are being offered to show that Relators are not the “original source” of the information in their TAC, and they are not being offered for the truth of the matter asserted therein:

1. “Safran U.S.A., Inc.’s website at <http://www.safran-usa.com>” and cites to information from that website. *See* TAC ¶ 10.
2. “TAA Designated Countries” available at <http://gsa.federalschedules.com/resources/taa-designated-countries/>. *See* TAC ¶ 34.

3. “MorphoTrust USA Identity Services U.S. Leader in Identity Solutions” available at http://www.morphotrust.com/Portals/0/Marketing/Brochures/MorphoTrust_Brochure_Fingerprinting_050613_web.pdf. *See* TAC ¶ 14.
4. “MorphoTrak Chosen as Biometric Provider for FBI Next Generation Identification Program” available at <https://www.morpho.com/en/media/morphotrak-chosen-biometric-provider-fbi-next-generation-identification-program-20090908>. *See* TAC ¶ 23.
5. “MorphoTrak Celebrates 40 years of Fingerprints” available at <http://findbiometrics.com/morphotrak-celebrates-40-years-of-fingerprints/>. *See* TAC ¶ 28.
6. Department of Justice Contract Transaction for fingerprint scanners, #553c558c30a4a978e84ffd24ba8f0130 (FY 2000-2015)” available at http://www.fedspending.org/fpds/fpds.php?reptype=r&database=fpds&unique_transaction_id=553c558c30a4a978e84ffd24ba8f0130&detail=3&dtype=T&sortp=i. *See* TAC ¶ 29.
7. “BIO-key International Awards Contract For Fingerprint Biometric Identity Solution” available at <http://www.news-medical.net/news/20100806/BIO-key-International-awards-contract-for-fingerprint-biometric-identity-solution.aspx>. *See* TAC ¶ 25.
8. Article entitled, “Federal Bureau of Investigation Awards Lockheed Martin Biometric Card Scanning Service Contract,” 6/22/2009, and article entitled, “Next Generation Identification (NGI).” *See* TAC ¶¶ 23, 25, 28.
9. “FBI Upgrades to Faster, More Accurate Fingerprint Identification System” available at <http://www.networkworld.com/article/2201167/data-center/fbi-turns-up-faster--more-accurate-fingerprint-identification-system.html>. *See* TAC ¶ 27.

10. Article entitled, “Biometric Technology Supplied by MorphoTrak for FBI
NGI to Transform Crime-Solving,” www.policeone.com. *See* TAC ¶ 28.

11. Frank Barret’s profile on LinkedIn available at
<https://www.linkedin.com/in/frankbarret/>. *See* TAC ¶ 19.

C. Customs And Border Patrol Rulings

Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). Judicial notice is properly taken of public records, such as transcripts, orders, and decisions made by courts or administrative agencies. *Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1232 (E.D. Cal. 2003); *Minor v. FedEx Office & Print Servs., Inc.*, 78 F. Supp. 3d 1021, 1027-28 (N.D. Cal. 2015); *United States v. 14.02 Acres of Land More or Less in Fresno Cty.*, 547 F.3d 943, 955 (9th Cir. 2008) (“Judicial notice is appropriate for records and reports of administrative bodies.” (citation and internal quotation marks omitted)). A ruling issued by the U.S. Customs and Border Protection is a matter of public record, and is judicially noticeable. *See, e.g., Vizio, Inc. v. Funai Elec. Co.*, No. CV 09-0174 AHM (RCx), 2010 WL 7762624, at *2-3 (C.D. Cal. Feb. 3, 2010).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court take judicial notice of the documents attached hereto as Exhibits A-N.

Dated: May 26, 2017

HOGAN LOVELLS US LLP

By: /s/ Paul B. Salvaty

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